

Before the
Federal Communications Commission
Washington, DC 20554

OCT 7 2002

In the Matter of)	
)	
Requests for Review and Waiver of the)	
Decisions of the)	
Universal Service Administrator by)	
)	
Pajaro Valley Unified School District)	File No. SLD-239267
Shepherdsville, Kentucky)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21J
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: October 4, 2002

Released: October 7, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. This Order dismisses the Requests for Review and Waiver filed by Pajaro Valley Unified School District (Pajaro Valley), Watsonville, California.' Pajaro Valley seeks review of two decisions issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) on December 28, 2001 and March 6, 2002.² The Commission received Pajaro Valley's Requests for Review and Waiver on February 28 and May 6, 2002, respectively.³ For the reasons set forth below, we deny both requests.

2. For requests seeking review of decisions issued on or after August 13, 2001 under section 54.720(b) of the Commission's rules, any such appeal must be filed with the Commission or SLD within 60 days of the issuance of the decision that the party seeks to have reviewed.⁴

¹ Letter from Terry McHenry, Pajaro Valley Unified School District, to Federal Communications Commission, filed February 28, 2002 (Request for Review); Facsimile from James McCluskey, Pajaro Valley Unified School District, to Federal Communications Commission, filed May 6, 2002 (Request for Waiver) (collectively, Requests for Review and Waiver).

² Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Jim McCluskey, Pajaro Valley Unified School District, dated December 28, 2001 (Item 25 Rejection Letter); Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Terry McHenry, Pajaro Valley Unified School District, to Federal Communications Commission, dated March 6, 2002 (Administrator's Decision on Appeal). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ See Requests for Review and Waiver.

⁴ 47 C.F.R. § 54.720(b). See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. Dec. 26, 2001), as

Documents are considered to be filed with the Commission and SLD only upon receipt.⁵ Because the instant Requests for Review and Waiver were not filed within the requisite 60-day period, they will be dismissed without further consideration.

3. To the extent that Pajaro Valley is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules for its underlying appeal of SLD's denial of its FCC Form 471, we deny that request as well.⁶ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.⁷ Pajaro Valley has not shown good cause for the untimely filing of its appeal with SLD. Pajaro Valley states that the primary contact at Pajaro Valley had been absent on medical leave and that, in his absence, other staff were unable to respond adequately.⁸

4. We conclude that Pajaro Valley has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.' In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeals within the established deadline if the applicant wishes its appeals to be considered on the merits. It is well established that personnel disruptions do not constitute good cause to grant a waiver."

5. In light of the thousands of applications that SLD must review and process each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures. In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeals if it wishes them to be considered on the merits. Here, Pajaro Valley fails to present good cause why it could not timely file its appeals. We, therefore, find no basis for waiving the deadline for the filing of Pajaro Valley's appeal with SLD.

corrected by *Implementation & Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Conn. Car. Bur. rel. Dec. 28, 2001 and Jan. 4, 2002); SLD web site, What's New (January 20, 2002), <http://www.sl.universalservice.org/whatsnew/012002.asp#extend3ed>.

⁵ 47 C.F.R. § 1.7.

⁶ See 47 C.F.R. § 54.720(b).

⁷ See 47 C.F.R. § 1.3.

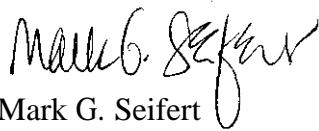
⁸ Request for Waiver at 1

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *Request for Review by Immaculate Conception School, Federal-State Joint Board on Universal Service, Changes to the Board & Directors of the National Exchange Carrier Association, Inc.*, File No. NEC 47012-01-9902900004, CC Docket Nos. 96-45 and 97-21, Order, DA 01-1120 (Conn. Car. Bur. rel. May 2, 2001).

6. ACCORDINGLY, IT **IS** ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, **1.3**, and 54.722(a), that the Requests for Review and Waiver filed on February 28 and May 6, 2002, by Pajaro Valley Unified School District, Watsonville, California, as well as the request to waive the deadline for filing its appeal with SLD ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
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Wireline Competition Bureau